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Nos. 73, 88

Supreme Court of the United States

October Term, 1966

FIRST SECURITY BANK OF UTAH, N. A.,
Petitioner,

v.

COMMERCIAL SECURITY BANK,
Respondent,

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY,
Petitioner,

v.

COMMERCIAL SECURITY BANK,
Respondent,

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF ON BEHALF OF VIRGINIA BANKERS ASSOCIATION AMICUS CURIAE

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PRELIMINARY STATEMENT

Virginia Bankers Association is filing this brief as amicus curiae in accordance with Rule 42 of the Revised Rules of the Supreme Court of the United States. It is to be noted that this brief is filed in Nos. 73 and 88 only. The failure to file a brief in No. 51, which involves exactly the same

issue, is due to the refusal of counsel for First National Bank of Logan, Logan, Utah, petitioner in that case, to consent to such filing.

THE STATUTES INVOLVED

The federal statute involved is Section 36(c) of Title 12 of the United States Code, as amended, the pertinent provisions of which read as follows:

> "(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. * * *"

The state statute involved is Section 7-3-6 of the Utah Code Annotated, 1953, as amended, the pertinent provisions of which read as follows:

> "Except in cities of the first class, or within unincorporated areas of a county in which a city of the first class is located, no branch bank shall be established in any city or town in which is located a bank or banks, state or national, regularly transacting a customary banking business, unless the bank seeking to establish such branch shall take over an existing bank. No unit bank organized and operating at a point where there are other operating banks, state or national, shall be permitted to be acquired by another bank for the

purpose of establishing a branch until such bank shall have been in operation as such for a period of five years."

THE INTEREST OF VIRGINIA BANKERS ASSOCIATION

Virginia Bankers Association is a non-stock corporation, not organized for profit, chartered under the laws of the Commonwealth of Virginia. Its active membership consists of both state and national banks and branches of each. As of August 31, 1966, the Association listed as active members 136 state banks, 114 national banks and branches of each totaling 474.[1]

The purposes of the Association are generally to promote ethical, sound and efficient banking practices for the welfare of banks and the banking public in Virginia.

Since its founding in 1893, the Association, reflecting the views of its state and national bank members, has favored and supported the concept of a strong dual banking system. It has felt that the preservation of such a system is possible only through laws which require the maintenance of a condition of competitive equality between state and national banks and which accomplish this objective by making both state and national banks subject to state statutes governing banking practices such as branching.

The Virginia Bankers Association is convinced that acceptance of the construction which the petitioners in the cases before this Court would give to Section 36(c) of Title 12, United States Code, would effectively destroy the dual banking system in Virginia or, in the alternative, force Virginia to change her branch banking laws in a manner that both the Commonwealth and the Association would consider not only objectionable but contrary to the best interests of banking, and the economy, in Virginia.

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[1] Records of Virginia Bankers Association.

The Association is keenly interested in seeing the continuance of an interpretation of Section 36(c) that would subject national, as well as state, banks to such conditions and restrictions of state statutes governing branch banking as shall be necessary to maintain competitive equality between them.

SUMMARY OF ARGUMENT

The Virginia Bankers Association concurs with the views expressed in the summary of argument contained in the brief on behalf of the Commonwealth of Virginia, amicus curiae, filed with this Court in Nos. 51, 73, and 88, and adopts the said summary of argument as its own.

ARGUMENT

The Virginia Bankers Association concurs with the views expressed in the argument contained in the brief on behalf of the Commonwealth of Virginia, amicus curiae, filed with this Court in Nos. 51, 73, and 88, and adopts the said argument as its own.

CONCLUSION

The judgment of the United States Court of Appeals for the District of Columbia Circuit should be sustained.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Henry T. Wickham, a member of the Bar of the Supreme Court of the United States and one of the counsel for the Virginia Bankers Association, as *amicus curiae,* in the above captioned matter, hereby certify that copies of the Brief on Behalf of Virginia Bankers Association, *Amicus Curiae,* have been served upon each of the counsel of record for the parties herein by depositing the same in the United States Post Office, with first class or air mail postage prepaid, this 21st day of September, 1966, pursuant to the provisions of Rules 33 of the Rules of the Supreme Court of the United States as follows: John J. Wilson, Esq., and Charles J. Steele, Esq., 815 Fifteenth Street, N. W., Washington, D. C., 20005, counsel for petitioner, First Security Bank of Utah, N. A.; James F. Bell, Esq., and Brian C. Elmer, Esq., 1001 Connecticut Avenue, N. W., Washington, D. C., 20036, counsel for respondent, Commercial Security Bank; and Thurgood Marshall, Esq., Solicitor General of the United States, Department of Justice, Washington, D. C., 20530, counsel for petitioner, James J. Saxon, Comptroller of the Currency.

HENRY T. WICKHAM